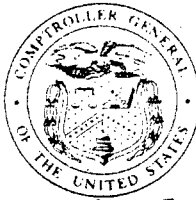


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Bid Rejection as Nonresponsive]

FILE:

B-199368

DATE: September 18, 1980

MATTER OF: Hub Testing Laboratories

DIGEST:

1. Information as to how bidders propose to comply with technical requirements for analysis of sediment, soil and rock samples could not be required for purpose of making responsiveness determination under invitation for bids regardless of solicitation language to that effect.
2. Where protesting small business was improperly found nonresponsive, and record indicates that contracting agency also considers firm nonresponsive, issue of firm's responsibility should now be referred to Small Business Administration for consideration under Certificate of Competency (COC) program. If COC is issued, awarded contract should be terminated for convenience of Government and award made to protester for remaining portion of terminated contract.

Hub Testing Laboratories (Hub) protests the rejection of its low bid under invitation for bids (IFB) No. R6-8-80-22, a total small business set-aside, issued by the Department of Agriculture, Forest Service (Forest Service) for the geotechnical analysis of sediment, soil and rock samples. During the pendency of the protest, award was made to the second low bidder. The Forest Service rejected Hub's bid as nonresponsive because, in the agency's opinion, the bid failed to provide an adequate description of the methods to be used in the preparation and analysis of samples. The Forest Service also indicated that Hub was non-responsive because it lacked the requisite experience in geotechnical analysis.

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The IFB's "Technical Requirement" section specified required methods of sample preparation and analysis. Regarding the former, the section provided:

"Rock, stream sediment and soil samples shall be digested by the methods identified below. For the elements Au [Gold], Ag [Silver], Cu [Copper], Mo [Molybdenum], Pb [Lead], Zn [Zinc] and U_3O_8 [Uranium Trioxide] digestion shall be by either HCl, HNO_3 or Aqua Regia. For Tungsten, the sample shall be digested by either Total or Fusion digestion."

With respect to the methods of analysis, the "Technical Requirement" section advised that only those listed therein would be acceptable and included in the listing "Atomic Absorption Spectrophotometry," "Fluorimetric analysis of U_3O_8 " and "Colorimetric or Individually Coupled Argon Plasma Spectrometric Analysis for Tungsten."

In addition, Clause 10(i)(2) of the IFB's solicitation Instructions and Conditions, entitled "Award of Contract," also required all bidders to provide "a description of the methods to be used in the preparation and analysis of the rock, stream sediment and soil samples." The solicitation's Schedule of Items cautioned that a bid which failed to provide the information requested in Clause 10(i) "may be rejected as nonresponsive."

To describe the sample preparation method that it would use, Hub stated in its bid:

"Rock, stream sediment, and soil samples shall be digested as follows:

Gold, Silver, Copper, Molybdenum, Lead, Zinc, U_3O_8 by either HCl, HNO_3 or Aqua Regia.

"Tungsten, by either Total or Fusion Digestion."

Regarding the method of analysis, Hub stated:

"All samples will be analyzed for Gold, Silver, Copper, Molybdenum, Lead, Zinc, Uranium Trioxide, using Atomic Absorption

Spectroscopy, Fluorescence, and/or Color-metric Spectroscopy."

The Forest Service found Hub's responses inadequate because they merely restated the IFB's technical requirements without providing more specific information regarding which type of preparation or analysis would be used for each specific element or sample. In a report on the protest, the Forest Service asserts that without such information it cannot be sure that the bidder would provide performance meeting the Government's requirements. For example, the Forest Service states that once one of the methods listed in the preparation part of the "Technical Requirement" section to "digest" soil samples for a particular element is chosen, that method also must be used to digest other samples for that element in order to achieve consistent results; the agency contends that it is not clear from Hub's bid as submitted that this would be the case. The Forest Service also indicates that since it does not have a commitment from Hub as to which of the analysis methods listed in the section that it intended to use for each of the elements listed therein, Hub would have the option of using a method of analysis during contract performance that may not be appropriate for a particular element. The Forest Service argues that Hub's failure to provide exact information in the above respects rendered its bid non-responsive. We do not agree.

We recently stated in Lapteff Associates, Martel Laboratories, Inc., Kappe Associates, Inc., B-196914, B-196914.2, B-197414, August 20, 1980, 80-2 CPD _____:

"We are not aware of any regulation or decision of this Office which permits a contracting agency to determine bid responsiveness by requiring bidders to furnish with their bids a description of how they propose to perform the contract. Such a description may be required by a contracting agency to determine a bidder's responsibility or to determine the acceptability of a proposal in a negotiated procurement. The test of responsiveness in formal advertising, however, is whether the bidder has offered to do what is required by the solicitation and not whether the bidder's

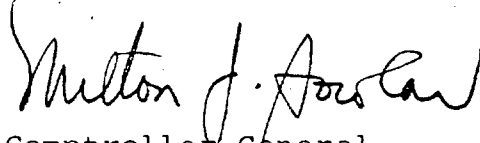
proposed method of performance is satisfactory. This is so regardless of solicitation language requiring inclusion of the information for the bid to be responsive, because a contracting agency cannot make a matter of responsibility into a question of responsiveness by the terms of the solicitation.] * * *

The solicitation in Clause 10(i)(2) required submission with the bid of only a "description" of sample preparation and analysis methods to be used. [While it may have been the agency's desire that the bidders provide more exact information, this desire was not conveyed by the terms of the written IFB.] In view of the discussion in our August 20 decision, Hub, by restating the IFB's technically required methods of preparation and analysis and therefore offering to do exactly what was required by the IFB as written, must be considered to have been responsive to the requirement of Clause 10(i)(2). As that decision states, [the question of how the firm intends to fulfill its obligation to properly prepare and analyze samples involves the firm's responsibility, not the responsiveness of the bid.]

The protest is sustained.

The question of Hub's responsibility was not referred to the Small Business Administration (SBA) for the possible issuance of a Certificate of Competency (COC) because the Forest Service's formal rejection of the Hub bid was based on a determination of nonresponsiveness which we believe was in error. In this regard, [no small business concern may be precluded from award because of nonresponsibility without referral of the matter to the SBA for a final disposition under the COC procedure.] 15 U.S.C. § 637(b)(7) (Supp. I 1977); Federal Procurement Regulations § 1-1.708-2 (1964 ed. amend. 192). We point out that where a small business is concerned, the SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of responsibility. Com-Data, Inc., B-191289, June 23, 1978, 78-1 CPD 459; The Forestry Account, B-193089, January 30, 1979, 79-1 CPD 68.

Therefore, by letter of today to the Secretary of Agriculture we are recommending that the contracting officer immediately refer the matter of Hub's responsibility to the SBA for the possible issuance of a COC. [If a COC is issued, the current contract should be terminated for the convenience of the Government and award made to Hub for the remaining portion of the terminated contract.] If a COC is not issued, no further action is required. See Angelo Warehouses Co., B-196780, March 28, 1980, 80-1 CPD 228.



For the Comptroller General
of the United States